

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ORLANDO MINO HERNANDEZ, OSMEL RUBEN
SOSA NAJERA, RAFAEL BASURTO GOMEZ, JOSE
LUIS MENDEZ, MIGUEL MIRANDA, ROSALIO
PEREZ, ANGEL GEOVANI RAMOS, and PALEMON
BENITO ANTONIO individually and on behalf of others
similarly situated,

20 Civ. 4457-RA

NOTICE OF MOTION

Plaintiffs,

-against-

LIRA OF NEW YORK INC (D/B/A LUKE'S BAR &
GRILL), LUIGI MILITELO, TOMMY TIN, JONATHAN
MATEOS, and LUIGI LUSARDI,

Defendants.

PLEASE TAKE NOTICE that upon the Declaration of Luigi Militello, dated March 14, 2022, the Declaration of Jonathan Mateos, dated March 14, 2022, the Declaration of Enzo Mateos, dated March 14, 2022, the Declaration of Diana Staley, dated March 12, 2022 the Declaration of Tommy Tin, dated March 14, 2022, the Declaration of Peter M. Levine, dated March 14, 202, the exhibits thereto, and all prior proceedings had herein, defendants Lira of New York Inc., Luigi Militelo, Jonathan Mateos, and Tommy Tin shall move this Court, before Hon. Robert W. Lehrburger, Magistrate Judge, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Room 18-D, New York, New York 10007, at a time and date to be set by the Court, for an Order pursuant to Rules 4(e), 8, 12(b)(2), 12(b)(4), 12(b)(5), 12(b)(6), 12(h)(2), 12(c), and 23 of the Federal Rules of Civil Procedure:

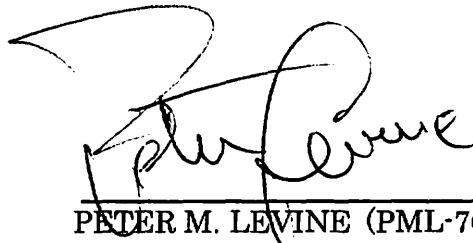
A. dismissing the Amended Complaint against Luigi Militelo and Jonathan Mateos on the grounds of lack of proper service;

B. dismissing the Amended Complaint against Jonathan Mateos and Tommy Tin the grounds the Amended Complaint fails state a claim against either as an “employer” as defined by the Fair Labor Standards Act and the New York Labor Law;

C. dismissing the class action claims in the Amended Complaint against Lira of New York Inc., Luigi Militelo, Jonathan Mateos, and Tommy Tin on the grounds the Amended Complaint fails to plead facts that plausibly establish numerosity.

D. granting to the moving defendants such other and further relief the Court deems just and proper.

Dated: New York, New York
March 14, 2022

A handwritten signature in black ink, appearing to read "Peter M. Levine", is written over a horizontal line.

PETER M. LEVINE (PML-7630)
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New York, New York 10022
212-599-0009

Attorney for Defendants Lira of New
York, Inc., Luigi Militelo, Jonathan
Mateos, and Tommy Tin